

## **REMARKS**

Claims 1 through 23 remain pending in this application.

### **Remarks Regarding Amendments**

The specification has been amended to include at page 1, following the title, a new section that is a Cross-Reference to Related Applications. A separate Petition to Accept Unintentional Delay in Referencing Priority Applications accompanies this Amendment and Response to Restriction and Election Requirements. Entry of the new section is respectfully solicited.

The specification has also been amended in the paragraph bridging pages 3 and 4 and in the paragraph bridging pages 5 and 6 to be consistent with the amendments to claims 1 and 15, discussed below. Typographical errors have been corrected in the amended paragraphs at page 9, lines 18-22; page 16, lines 3-4; page 17, last paragraph; page 22, lines 5-8; and page 31, lines 1-8. These typographical errors and their corrections are readily apparent in the marked-up replacement paragraphs set forth above, the entry of which is respectfully solicited.

Claims 1 and 15 have been amended to include an inadvertently omitted, and presently preferred, group for substituent R, namely, "a C<sub>3</sub>-C<sub>6</sub> cycloalkyl group, which is optionally substituted with a straight or branched C<sub>1</sub>-C<sub>6</sub> alkyl group". This language has literal support in the application as filed at page 4, lines 29-30; at page 6, lines 24-25; and in the last clause of each of original claims 1 and 15. Further support is at page 11, lines 9-10, for example. These portions of the original specification and claims support the amended portions of the specification and claims set forth above.

Claim 18 was also amended merely to include a period at the end of the claim.

Since all of the amendments set forth above are supported by the application as filed, their entry is respectfully solicited.

With the foregoing amendments to claims 1 and 15, the dependent claims referred to in the Examiner's note at the middle of page 3 of the "Detailed Action" portion of the Office Action, as well as claims 1 and 15 themselves, are fully consistent with each other and have appropriate antecedent bases. Thus, claims 1 and 15 provide the antecedent basis for the dependent claims in which R is a cycloalkyl group.

### **Response to Restriction and Election Requirements**

The Office Action comprises a restriction and election requirement among ten exemplary groups of claims that are identified at pages 2 and 3 of the Detailed Action. Since this application is a national phase of an International PCT application, restriction is governed by 35 U.S.C. § 121 incorporated into § 372, as well as PCT Rules 13.1 and 13.2, and further by 37 C.F.R. § 1.475. As noted by the Examiner at page 5 of the Detailed Action, under 37 C.F.R. § 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if they are drawn only to one of the following combinations: ... (3) a product, a process specially adapted for the manufacture of said product, and the use of said product, among other combinations as set forth in 37 C.F.R. § 1.475(b) and reproduced at page 5 of the Detailed Action. Here, Applicants submit that claims 1-23 correspond to these categories. Claims 15-20 and 23 are directed to products, claims 21 and 22 are directed to processes for preparing the products, and claims 1-14 are directed to methods of using the products. Claim 23 depends from claim 15 and is directed to a pharmaceutical composition comprising the product of claim 15, and at least one pharmaceutically acceptable carrier and/or diluent.

Applicants hereby respectfully traverse the restriction and election requirements for the reasons set forth below.

At page 4 of the Detailed Action, the Examiner determined that there was a lack of unity of invention because the technical features corresponding to the claims were considered to be the 1,2-diazole and the urea at the 3 position of the 1,2-diazole. The Examiner concluded that these technical features are not special technical features because they fail to define a contribution over the cited prior art as can be seen by Vogel *et al.* (*Helvetica Chimica Acta*, Vol. 58, Fasc. 3 (1975) – Nr. 86, pp. 761-771; hereinafter “Vogel”) or Fukami U.S. Patent 6,043,246 (hereinafter “Fukami”). Applicants respectfully but strenuously traverse the Examiner’s determinations and conclusion. At the least, Vogel and Fukami differ from the present invention in that they relate to pyrazole derivatives including a methyl group or an aryl or heteroaryl moiety, rather than a cycloalkyl group for substituent R as in the provisionally most specifically elected species of the present invention as set forth below. Accordingly, at least this species is believed to define over Vogel and Fukami. Thus, at least with respect to this most specific provisionally elected invention, there is a single general

inventive concept among the categories of invention which defines over the prior art cited by the Examiner.

Under 37 C.F.R. § 1.499, Applicants provisionally elect to prosecute in this application the linked categories of invention considered to have unity of invention under 37 C.F.R. § 1.475(b) as defined in claims 1-22. More specifically, Applicants hereby provisionally elect and designate for examination in this application the subject matter of claims 21 and 22, directed to processes of preparing the compounds of formula I. Even more specifically, Applicants provisionally elect for prosecution in this application the subject matter of claim 21, directed to a process of preparing the compounds of formula I.

Yet more specifically, Applicants provisionally elect for prosecution in this application the subject matter of claim 21, wherein R is a C<sub>3</sub>-C<sub>6</sub> cycloalkyl group, R<sub>1</sub> is –(CH<sub>2</sub>)<sub>n</sub>-R<sub>3</sub>, N is 1 and R<sub>3</sub> is an optionally substituted phenyl group, and R<sub>2</sub> is hydrogen. The same most specifically provisionally elected definitions apply to the other initially provisionally elected categories of invention relating to the method claims 1-14 and product claims 15-20 and 23.

The foregoing provisional elections are made without the waiver of the right to file one or more divisional or continuation applications directed to non-elected subject matter. Moreover, under 37 C.F.R. § 1.475(b), Applicants respectfully submit that they are entitled to a reasonable scope and number of species, such as that provided in the parent U.S. Patent 6,387,900 B1. To the extent that any claims of the present application overlap with those of their parent patent, Applicants will file an appropriate Terminal Disclaimer or cancel any identical claims.

**CONCLUSION**

Reconsideration and withdrawal of the restriction and election requirements, an early examination and a Notice of Allowance with respect to all claims is respectfully solicited.

If the Examiner has any questions or wishes to discuss the claims, Applicants encourage the Examiner to call the undersigned at the telephone number indicated below.

Respectfully submitted

  
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